IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1857 OF 2002

1. Shri Jagannath Pilu Tiwate

2. Smt. Subhadra Ananda Patil

3. Smt. Tai Pilu Tiwate

All adult, r/o Kuthare, Post Kuthare, Taluka Patan, District: Satara. .... Petitioners

- Versus -

1. The State of Maharashtra

2. Deputy Commissioner for Rehabilitation of Project Affected Persons, Division Pune, having it's office at Divisional Commissioner's Office, Pune Division, Vidhan Bhavan, Pune-411 001.

3. Special Land Acquisition Officer No.12, Satara. .... Respondents

Shri S.D. Thokade for the Petitioners.

Shri V.S. Gokhale, Asst. Government Pleader, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
V.M. KANADE, JJ.

DATED: SEPTEMBER 14, 2005

ORAL JUDGMENT (Per V.M.Kanade, J.):

1. By this petition the petitioners challenge the order dated 7-8-2000 passed by respondent No.2 and are also challenging the Government letter dated 11-2-2000, which is annexed at Exhibit-G to the petition, under Articles 226 and 227 of the Constitution of India.

2. Brief facts which are necessary for the purpose of deciding this petition are as under :-

3. The Notification under Section 4(1) of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act" was issued after the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986, hereinafter referred to as "the Rehabilitation Act of 1986" were made applicable to the land owned by the petitioners. Thereafter, the Notification under Section 6 was issued and subsequently Notice under Section 9(3)(4) of the said Act, dated 24-5-2000, was issued by the Special Land Acquisition Officer. The grievance of the petitioners is that respondent No.2 i.e., the Deputy Commissioner for Rehabilitation of Project Affected Persons, before whom the application for reconsideration of the acquisition proceedings was filed, did not take into consideration the shares of each of the co-sharers separately for the purpose of calculating the holding which is necessary for fixing the slab as contemplated under the Rehabilitation Act of 1986. It is further contended that the Government circular dated 11-2-2000, cancelling the previous circular dated 28-6-1998, is illegal and contrary to the directions given by the Hon’ble Supreme Court in similar proceedings which were pending before the Supreme Court. Lastly, it was contended that respondent No.2 had, while deciding the

appeal filed by the petitioners, did not take into consideration the pot kharaba land to the extent of 0.14 ares from the land which was sought to be acquired by the Special Land Acquisition Officer and, therefore, the acquisition proceedings are liable to be quashed and the order passed by respondent No.2 also on this ground is illegal.

4. We are unable to accept the contention raised by the counsel appearing on behalf of the petitioners. As regards the contention raised by the petitioners regarding the shares of the coparceners not being considered, this Court in the case of **Shivgonda Balgonda Patil and others v. The Director of Resettlement and others,** reported in AIR 1992 Bombay 72 has considered this very question and had held that merely because the coparceners have undivided share in the joint property their shares cannot be considered independently in view of the definition of the term "holding" defined under the Maharashtra Resettlement of Project Displaced Persons Act, 1976, hereinafter referred to as "the Resettlement Act of 1976". Though the Resettlement Act of 1976 was repealed and the present Rehabilitation Act of 1986 was substituted in its place, the earlier Act and the provisions contained therein are analogous and similar to the provisions contained in that Act. Save and except regarding the reduction of the slab from 8 acres to 4 acres. Further, so far as the definition of

the term "holding" is concerned, it has not been altered or changed in the subsequent Act. The Division Bench of this Court in the said case had, after following the Full Bench Judgment of this Court in **Ganpat Balwant Pawar v. Special Land Acquisition Officer No.7,** reported in 1984 Mah.L.J. 752 = AIR 1984 Bombay 382 had arrived at the same conclusion. In view of this, the first submission of the learned counsel cannot be accepted.

5. So far as the second contention regarding the validity and legality of the Government circular dated 11-2-2000 is concerned, this submission also cannot be accepted. Firstly reliance placed in the judgment of the Supreme Court in **Civil Appeal No.11809 of 1995** (Babas Bhau Balwan v. Director of Resettlement & Ors.), which is annexed as Exhibit-I to the petition, is of no assistance to the petitioners as the directions therein were given to the Commissioner to consider the earlier Government circular dated 28-6-1998 in the facts and circumstances of the said case. It cannot be said that therefore any ratio was laid down by the Supreme Court in the said case. The Government circular dated 11-2-2000 is an internal correspondence between the officers of the Government and therefore it cannot be said to be illegal. The Notification at Exhibit-F is in fact a circular which has been issued for the purpose of clarifying certain aspects and grievances which were

made and brought to the notice of the Commissioner, Pune Division, Pune. In our view, the said circular cannot have the force of law and in any case not reflected from the statutory provisions of the Rehabilitation Act of 1986 or the rules, if any, framed thereunder. The second contention also of the petitioners cannot be accepted.

6. As regards the contention of the petitioners regarding non-consideration of the pot kharaba land is concerned, in our view, even if the pot kharaba land of the petitioners which is 0.14 ares is deducted from his total holding which is 4 hectare and 27 ares, even then their land is liable to be acquired as the same is above the slab of 4 acres. Hence, this contention also does not survive.

7. In the result, there is no case made out in the submissions made by the learned counsel for the petitioners. The writ petition is dismissed. Interim relief stands vacated. Rule is discharged with no order as to costs.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**